No. 02-626

In The
Supreme Court of the United States

SOUTH FLORIDA WATER MANAGEMENT DISTRICT,

Petitioner,

v.

MICCOSUKEE TRIBE OF INDIANS, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF *AMICI CURIAE* FLORIDA WILDLIFE FEDERATION, ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA, AND AUDUBON SOCIETY OF THE EVERGLADES IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether a pump's discharge of water containing pollutants, where the pollutants do not originate from the pump itself, is exempt from point source Clean Water Act permitting when the polluted water is pumped from a drainage canal that is a jurisdictional water of the United States into a different water of the United States into which the pollutants would not be discharged but for the action of the pump.

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INTERESTS OF *AMICI CURIAE*

The Florida Wildlife Federation, Environmental Confederation of Southwest Florida, and Audubon Society of the Everglades, as *amici curiae*, respectfully submit this brief in support of Respondents Miccosukee Tribe of Indians and Friends of the Everglades.[1]

The *Amici* are conservation organizations established for the purpose of protecting Florida's magnificent natural resources, including the Everglades National Park, a World Heritage site. The Clean Water Act permitting requirement upheld by the court below will serve to protect the Everglades and Lake Okeechobee, which are among the most ecologically important water bodies in the United States. The Everglades are already seriously impaired by pollution, and the exemption from Clean Water Act permitting sought by the petitioner South Florida Water Management District would further diminish protections for this unique ecosystem.

The Florida Wildlife Federation ("FWF") is a statewide non-profit conservation and education organization with over 12,500 members. FWF's mission includes the preservation, management, and improvement of Florida's water resources and its fish and wildlife habitat. Many of FWF's members reside within Lake Okeechobee's watershed and use the waters in the Lake and of the Everglades

[1] The parties have consented to the filing of this brief. The *Amici* have filed letters of consent with the Clerk. Pursuant to Rule 37.6, *Amici* state that no counsel for any party in this case authored this brief in whole or in part, and no person or entity other than *Amici* or their representatives has made a monetary contribution to the preparation and submission of this brief.

for canoeing, air-boating, wildlife observation, photography, personal and commercial research, sport fishing, and waterfowl hunting. In particular, many FWF members fish, recreate and observe wildlife in the Everglades around the S-9 pumping station which is the subject of this appeal. FWF focuses much of its public education and advocacy efforts on the Everglades and Lake Okeechobee.

FWF recently obtained a Consent Decree that required the U.S. Environmental Protection Agency ("EPA") and, indirectly, the State of Florida, to comply with a 1972 Clean Water Act requirement to inventory and take corrective action on over 700 Florida water bodies which are polluted beyond legal standards. *Florida Wildlife Federation*, *et al. v. Carol M. Browner*, No. 4: 98CV356-WS (N.D. Fla. 1999). Both the federal and state governments had completely disregarded their responsibilities to take corrective action for over 25 years. Although a Consent Decree was entered in 1999, *id*. (Order of August 9, 1999), FWF has had to file yet another legal action to force the State of Florida to reduce polluted discharges down to levels that will allow the ecological survival of Lake Okeechobee. *Florida Wildlife Federation*, *et al. v. Florida Department of Environmental Protection*, No. 03-3532RP (Fla. Div. Admin. Hearings filed Sept. 26, 2003).

FWF has a pending Clean Water Act case against Petitioner South Florida Water Management District that is similar to the instant appeal. In that case, FWF is seeking to require the District to obtain Clean Water Act permits for its practice of force-pumping polluted drainage canal water into Lake Okeechobee. *See Florida Wildlife Federation v. South Florida Water Management District,* now consolidated under case No. 02-80309-CIV (S.D. Fla. filed July 30, 2002). The canals are at an elevation several feet lower than the surface of Lake Okeechobee and the

polluted canal water is disposed by pumping it up into the Lake. Although these drainage canals are waters of the United States, they have been officially designated by Florida and EPA as waters that fail to meet their classified use – fish and wildlife and swimming – because they are impaired by pollution beyond legal standards. Lake Okeechobee, which receives the discharge from these canals, is designated as a drinking water source – the most highly protected classification of use for water bodies in Florida. On July 1, 2003, FWF's case was stayed pending disposition of the instant appeal.

The Environmental Confederation of Southwest Florida ("ECOSWF") is a non-profit organization established for the purpose of protecting and preserving Florida's surface waters, ground water aquifers, wetlands, endangered and threatened species and their habitats, and other natural resources. Many of ECOSWF's members use and enjoy Lake Okeechobee and the Everglades for recreation, fishing, bird watching, photography, and educational purposes. In addition, ECOSWF has participated in numerous legal challenges aimed at preserving Florida's waters. For example, ECOSWF was a co-plaintiff with FWF and another conservation organization in a 1998 Clean Water Act enforcement case that resulted in the 1999 Consent Decree. For 25 years before that suit, the EPA and the State of Florida had utterly failed to comply with important obligations under the Clean Water Act.

Audubon Society of the Everglades ("ASE") is a non-profit conservation and education organization established in 1966 to promote the conservation of wildlife and the natural environment as well as an understanding of and interest in wildlife and the environment that supports it. ASE and its members conduct field trips and summer

conservation camps to give schoolchildren the opportunity to experience the ecology of Lake Okeechobee and the Everglades firsthand. Many of ASE's members also use the Everglades for bird watching and other recreational activities. For the last fifteen years, ASE has also been a participant in the litigation between the U.S. Department of Interior and Petitioner concerning excessive phosphorus pollution of the Everglades.

SUMMARY OF THE ARGUMENT

The discharge of water from the S-9 pumping station is subject to Clean Water Act permitting requirements because the pumps are withdrawing pollutant-laden storm water and ground water from the South New River drainage canal and then discharging the polluted water into the Everglades. The operation of the S-9 pumping station introduces ground water into the drainage canal and then discharges the ground water into the Everglades. A discharge of ground water containing pollutants through a point source into a water of the United States requires an NPDES permit even if the pollutants are not introduced into the ground water by the discharger.

The "unitary waters" exemption posited by the Solicitor General and the District must be rejected as inconsistent with the Clean Water Act because: 1) any discharge of storm water that contributes to a violation of water pollution limits requires an NPDES permit regardless of the origin of the storm water; and 2) the Clean Water Act contains no express or implied principle that separate water bodies should be treated as a single water of the United States simply because they commingled a half

century ago. Adoption of the "unitary waters" theory would also defeat the purposes underlying the Clean Water Act requirement that states must designate uses and water quality specifications for each individual water body.

The sweeping character of the exemption sought by the District is revealed by the results of its application under the facts of this case. The S-9 pumping station would be allowed to continue to discharge canal water that is, in fact, contributing to a violation of water quality standards in the Everglades. The District would also be allowed to force-pump profoundly polluted drainage canal water up into Lake Okeechobee, a designated drinking water source.

The District claims that it should be exempt from Clean Water Act regulation because it is "allocating" water to the Everglades through the S-9 pumping station. That pump station does not function to allocate water but instead is a system that collects, conveys, and disposes of unwanted run-off and ground water seepage in order to provide drainage for developed lands.

FACTUAL BACKGROUND

A. THE S-9 PUMPING STATION

The S-9 pumping station is an industrial scale pumping station that conveys immense quantities of water into the Everglades. Attached as Appendix 1 is a description and photographs of the pumping station from a publication by Petitioner South Florida Water Management

District.[2] The scale of the water flow through South Florida Water Management District pumps is illustrated by the photographs on the fourth and fifth pages of Appendix 1 that graphically depict the size of the propellers and the diameter of the pipes. (App. 1, 4a-5a). Each of the three S-9 pumps discharges at the rate of 960 cubic feet per second ("cfs") for a total discharge of 2,880 cubic feet per second. U.S. ARMY CORPS OF ENGINEERS, INTERIM WATER CONTROL PLAN FOR PUMPING STATION 9A AND STRUCTURE 381, *available at* http://www.saj.usace.army.mil/projects/dwcp_c11.htm, § 7.02, ¶4 (May 2002) (App. 2, 7a) [hereinafter "INTERIM WATER CONTROL PLAN"].[3] The discharge rate of 2,880 cubic feet per second from the S-9 pumping station is considerably larger than the average flow of the upper Suwannee River and of many other important Florida rivers.[4]

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[2] SOUTH FLORIDA WATER MANAGEMENT DISTRICT, PUMPING STATIONS (1973) (App. 1).

[3] *See also, Miccosukee Tribe of Indians v. South Florida Water Management District*, 1999 U.S. District LEXIS 23306, at *4 n.5 (S.D. Fla. Sept. 30, 1999).

[4] *See e.g.*, U.S. GEOLOGICAL SURVEY, CALENDAR YEAR STREAMFLOW STATISTICS FOR FLORIDA, *at* http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02312000&agency_cd=USGS (Withlacoochee River); http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02326900&agency_cd=USGS (St. Marks River); http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02370000&agency_cd=USGS (Blackwater River); http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02235000&agency_cd=USGS (Wekiva River); http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02232400&agency_cd=USGS (St. Johns River); http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02359000&agency_cd=USGS (Chipola River); and http://nwis.waterdata.usgs.gov/fl/nwis/annual/?site_no=02231000&agency_cd=USGS (St. Marys River) (last visited Nov. 7, 2003).

B. THE RELATIONSHIP BETWEEN THE S-9 PUMPING STATION AND THE EVERGLADES

The S-9 pumping station removes water from a portion of the former Everglades that is now a part of the western suburbs of Fort Lauderdale and discharges that water into the Everglades. Fifty years ago a levee was constructed on a portion of the Everglades in western Broward County. Construction of the levee and the accompanying S-9 pumping station allowed drainage of the area east of the levee, making the land available for agricultural and urban development. SOUTH FLORIDA WATER MANAGEMENT DISTRICT, EVERGLADES INTERIM REPORT 2-11 (Jan. 1, 1999), *available at* http://www.sfwmd.gov/org/ema/everglades/interimrpt_98/chpt2.pdf (App. 3) [hereinafter "EVERGLADES INTERIM REPORT"]; *see also* Pet'r Br. at 8-9. The South New River Canal (the relevant portion is known as "C-11 West") runs through this area to the S-9 pumping station. On the west (receiving) side of S-9 are the Everglades.

The height of water in the Everglades is held at 9.5 feet to 10.5 feet[5] above sea level.[6] This is several feet

[5] SOUTH FLORIDA WATER MANAGEMENT DISTRICT, ECOLOGICAL IMPACTS OF DROUGHT IN THE WATER CONSERVATION AREAS at 2 (Apr. 13, 2001), *available at* http://www.sfwmd.gov/org/wrp/wrp_evg/reports/drought_0401/generalinfo.pdf (App. 4, 11a). Specifically, this part of the Everglades is designated "Water Conservation Area 3" ("WCA-3").

[6] Sea Level is now expressed as the National Geodetic Vertical Datum ("NGVD") which is a convention for establishing a standardized elevation for mean sea level. For that reason, all elevations in technical literature refer to elevations expressed in terms of NGVD. DEFINITION OF NGVD, *at* www.ems-i.com/wmshelp/General/Edit_Menu/Coordinate_Conversions/NGVD_system.htm (last visited Nov. 10, 2003).

higher than the elevation of the ground in the developed areas east of the levee.[7] HERBERT J. FREIBERGER, U.S. GEOLOGICAL SURVEY, EFFECTS OF BACKPUMPING FROM SOUTH NEW RIVER CANAL AT PUMP STATION S-9 ON QUALITY OF WATER IN WATER CONSERVATION AREA 3, BROWARD COUNTY, FLORIDA 12, Open-File Rep. No. 73026 (1973) (App. 7, 14a) [hereinafter FREIBERGER REPORT]. The much higher water level in the Everglades forces ground water through the ground under the levee because the soil and rock underlying the Everglades is porous. Ground water seepage is such a serious problem that a large auxiliary pump station next to S-9 is under construction and will be operated for the sole purpose of collecting ground water seepage in the canal east of the levee and discharging it to the Everglades (the pump station has been given number S-9A). *See* INTERIM WATER CONTROL PLAN at § 7.01 ("[t]he operation of S-9A is expected to be near continuous to match the seepage") (App. 2, 6a); *see also* Pet'r Br. at 11.

The canal and S-9 pumping station are also essential to disposing of urban storm water run-off that would otherwise accumulate in a relatively short time and cause floods. Br. of Amicus City of Weston at 4-6. Run-off from the suburban and agricultural lands east of the levee is collected in the South New River Canal and conveyed from that canal into the Everglades by the S-9 pumping station.[8] When the water level in the South New River Canal

[7] Studies have indicated that soil subsidence east of the levee has lowered the elevation of the land surface by almost four feet. EVERGLADES INTERIM REPORT 2-10, *available at* http://www.sfwmd.gov/org/ema/everglades/interimrpt_98/chpt2.pdf (last visited Nov. 7, 2003).

[8] MAP OF C-11 WEST BASIN AND CANAL IN CENTRAL BROWARD COUNTY, *at* http://www.sfwmd.gov/org/exo/broward/c11bmp/images/jpgs/

(Continued on following page)

rises to four feet NGVD, the S-9 pumps are turned on; they are turned back off when the canal water level falls to one foot NGVD. Pet'r Br. at 11. The pumps are also routinely operated in preparation for approaching storms. Br. of Amicus City of Weston at 6.

C. POLLUTANTS IN THE S-9 DISCHARGE TO THE EVERGLADES

The area from which the South New River Canal (C-11 West) collects urban run-off is inhabited by 136,000 people. Pet'r Br. at 12. As explained on the South Florida Water Management District's web site, run-off collection canals capture and convey "urban fertilizers, detergents, household chemicals, gas, [and] oil. . . ." The same web site states that "[t]he C-11 West basin has been cited as one of the top urban polluters of the Everglades." SOUTH FLORIDA WATER MANAGEMENT DISTRICT, TURF & LANDSCAPE BEST MANAGEMENT PRACTICES FOR THE C-11 WEST CANAL BASIN, *at* http://www.sfwmd.gov/org/exo/broward/c11bmp/execsum.html ¶¶1, 3 (App. 6, 13a).

It has been well-known for at least thirty years that the S-9 pump withdraws ground water that is chemically different from that of the Everglades and discharges this ground water into the Everglades. A United States Geological Survey Report dated 1973 – conducted in cooperation with the District – found that ground water is a

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c-11west.jpg. (App. 5, 12a). The map shows that the storm water run-off collection system includes the cities of Weston (which has filed an amicus brief in this case), Sunrise, Davie, Cooper City, and part of Pembroke Pines. The map states that floodwater from the cities and towns in this area is "pumped to the Everglades via the S-9 pump." *Id.*

"major contributor to the [South New River] canal." FREIBERGER REPORT at 20 (App. 7, 15a). This ground water pumped through S-9 is mineralized and has low levels of dissolved oxygen. *Id.* at 61 (App. 7, 17a) (dissolved oxygen levels in the South New River Canal on the intake side of the S-9 pump "were consistently low, presumably because of the great amount of groundwater inflow to the canal"). Dissolved oxygen is a critical constituent in lakes, rivers and wetlands because fish and other aquatic life need to breathe oxygen dissolved in the water in order to survive. FLORIDA OCEANOGRAPHIC SOCIETY, COMMON WATER QUALITY TESTS AND WHY THEY ARE IMPORTANT, DISSOLVED OXYGEN, *at* www.floridaoceanographic.org/parameters.htm (last visited Nov. 10, 2003). When the S-9 is in operation, dissolved oxygen levels in the adjacent Everglades (WCA-3) "immediately" decrease to about the same concentration of dissolved oxygen in the canal from which the S-9 withdraws water. FREIBERGER REPORT at 61 (App. 7, 17a). S-9 does not merely discharge run-off: it adds pollutants to the canal water by pulling ground water up into the canal and then discharges the canal's contents into the Everglades. *Id*. at 14 (App. 7, 14-15a).

Neither the ground water nor the run-off collected in the canal would naturally flow into the Everglades because the water in the Everglades is higher than the urban and agricultural land to the east of the levee. For this reason, the waters of the Everglades and of the South New River Canal "intermingle" only to the extent that the S-9 pumping station forces canal water *up* and into the Everglades.

The water discharged through S-9 into the Everglades is categorized by the EPA and the State of Florida as impaired by pollution. Clean Water Act section 303(d)

requires states to file with the EPA reports that identify water bodies within the state that are so polluted that they fail to meet established water quality standards. 33 U.S.C. § 1313(d). The EPA then approves (or modifies) the list of "impaired" waters. 33 U.S.C. § 1313(d)(2). The South New River Canal, from which S-9 pumps water into the Everglades, is so fouled by urban fertilizers, detergents, household chemicals and ground water contaminants that the canal is listed on the official approved 303(d) list as being impaired – polluted beyond legal limits – as to nutrients,[9] dissolved oxygen and coliforms. U.S. EPA, REGION 4, DECISION DOCUMENT REGARDING DEPARTMENT OF ENVIRONMENTAL PROTECTION'S § 303(d) LIST AMENDMENT, *available at* http://www.epa.gov/region4/water/tmdl/florida/florida303d_update.pdf (App. 8) [hereinafter "EPA DECISION DOCUMENT"].[10] The portion of the Everglades

[9] Nutrients are primarily phosphorus and nitrogen which are constituents of fertilizers used in cities and farms.

[10] The EPA DECISION DOCUMENT lists individual segments of water bodies and gives each a Water Body Identification Number ("Wbid"). The South New River Canal (also known as C-11 West) has been given Water Body Identification Number 3279 and is listed as impaired as to nutrients, coliforms and dissolved oxygen. EPA DECISION DOCUMENT at 140 (App. 8, 18a). A map depicting these areas is attached as Appendix 9. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, 303(d) LISTED WATER SEGMENTS IN BROWARD COUNTY, *available at* http://www.dep.state.fl.us/water/tmdl/docs/maps/broward.pdf (last visited Nov. 10, 2003). The Water Body Identification Numbers appear on a table on the right side of the map; the various impaired waters are depicted as a salmon color; and the C-11 West canal (South New River Canal) is located about ½ inch southeast of the D in the word "Broward" on the map, immediately above Wbid number 3279 on the map. (App. 9, 19a).

that receives this polluted water is similarly listed as being impaired as to nutrients and dissolved oxygen.[11] *Id.*

D. THE COMPREHENSIVE EVERGLADES RESTORATION PROJECT

The Comprehensive Everglades Restoration Project ("CERP") is a joint federal and state project to re-engineer many of South Florida's canals and pump stations to provide additional water supply to urban and agricultural areas as well as to the Everglades.[12]

The CERP includes plans for modifications to the S-9 pumping station. It calls for the construction of an auxiliary pump station to gather ground water seepage and discharge it into the surface waters of the Everglades (the S-9A project discussed above). In addition, the CERP also plans for the impoundment and diversion to the south of some urban storm water. SOUTH FLORIDA WATER MANAGEMENT DISTRICT, EVERGLADES REGULATION: C-11 WEST, *at* http://www.sfwmd.gov/org/reg/esp/c11w.html (last visited Nov. 7, 2003) (*see* section entitled "Future Plans," ¶4). The District's web site states that "neither of the two Federal

[11] The EPA DECISION DOCUMENT also shows that the waters in the Everglades that receive discharge from S-9 (Wbid Numbers 3268, 3268A and 3278A) are similarly impaired as to nutrients, dissolved oxygen and mercury. EPA DECISION DOCUMENT at 140 (App. 8, 18a); 303(d) LISTED WATER SEGMENTS IN BROWARD COUNTY (App. 9, 19a).

[12] CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL PROJECT COMPREHENSIVE REVIEW STUDY, FINAL INTEGRATED FEASIBILITY REPORT AND PROGRAMATIC ENVIRONMENTAL IMPACT STATEMENT, SUMMARY, vii-x (Apr. 1999), *available at* http://www.evergladesplan.org/docs/comp_plan_apr99/summary.pdf. The District has sought to lodge a hard copy of this document with the Court.

projects is specifically being designed for treatment of stormwater"[13] although it is anticipated that some water quality improvements may result. *Id*.

E. THE EVERGLADES FOREVER ACT PERMIT

The United States Department of Interior has brought extensive water pollution litigation against the District and the State of Florida because the District was pumping and conveying nutrient-laden agricultural storm water into the Loxahatchee National Wildlife Refuge and the Everglades National Park. *United States v. South Florida Water Management District*, 28 F.3d 1563, 1568-79 (11th Cir. 1994). One outcome of that case was a settlement that resulted in passage of the Everglades Forever Act, section 373.4592, Florida Statutes (2002).[14] Section 9 of that Act required the District to obtain a pollution discharge permit for structures such as the S-9 pumping station, and required the discharge from that pump station to comply with all water quality standards by December 31, 2006. § 373.4592(9)(k), Fla. Stat. (2002); *see also* FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FINAL PERMIT, *available at* ftp://everglades.dep.

[13] *Compare*, Pet'r Br. at 12, characterizing these same components as being designed to reduce pollution.

[14] The Act called for pollution source reduction and an array of treatment works to remove much of the nutrients before they could reach the Everglades. The treatment works are denominated the Everglades Construction Project. A permitting system was also required under section 9(k) of the Act for other pumping stations and water discharge structures that discharge pollutants into the Everglades but which are not part of the Everglades Construction Project. § 373.4592(9)(k), Fla. Stat.

state.fl.us/permitting/Non-ECP/Non-ECP%20Permit.pdf (last visited Nov. 7, 2003).[15] It requires only "public outreach" by the District and the promulgation of voluntary landscaping practices that, if followed, might help to reduce pollution. SOUTH FLORIDA WATER MANAGEMENT DISTRICT, EVERGLADES REGULATION: C-11 WEST, *at* http://www.sfwmd.gov/org/reg/esp/c11w.html (last visited Nov. 7, 2003).

In 2003, the Florida legislature passed amendments to the Everglades Forever Act. Ch. 2003-12, Laws of Florida. Those amendments replace the former Act's specific deadlines with a "long-term plan" for achieving water quality standards in the Everglades. Ch. 2003-12, § 1 (amending § 373.4592, Fla. Stat.).[16]

The Long-Term Plan does not call for the S-9 discharge to be in full compliance with water quality standards until 2036. Specifically, the Long-Term Plan at page 6-86 states as to the C-11 West basin that:

> [E]ach alternative assumed that the long-term strategy to comply with water quality standards,

[15] This document is posted on the Florida Department of Environmental Protection's web site and the page references are to pages in the current Everglades Forever Act permit.

[16] Section 1 of Chapter 2003-12 amended section 373.4592(2), Florida Statutes to add a definition reading: "Long Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan For Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as modified herein. § 373.4592(j), Fla. Stat. That same section of Ch. 2003-12 also amended section 373.4592(3), Florida Statutes – the Everglades Forever Act – so as to substitute this Long-Term Plan for the previous compliance schedule.

> including the numeric phosphorus criterion, would rely on completion of the Western C-11 Impoundment and Diversion Canal CERP Project (2006 completion) and the North Lake Belt Storage CERP Project (2036 completion).

BURNS & MCDONNELL, EVERGLADES PROTECTION AREA TRIBUTARY BASINS CONCEPTUAL LONG-TERM PLAN FOR ACHIEVING WATER QUALITY GOALS FINAL REPORT at 6-86 (Mar. 17, 2003), *available at* http://exchange.law.miami.edu/everglades/restore/FinalConceptual/finalconceptual_031703%20(3.43mb).pdf (last visited Nov. 10, 2003) (parentheticals in original). The State of Florida and the District have previously used "long-term" plans as a substitute for compliance deadlines. In 1987, the Florida legislature passed the "Surface Water Improvement and Management Act," which found that

> [S]urface water problems can be corrected and prevented through plans and programs for surface water improvement and management that are planned, designed, and implemented by the water management districts and local governments.

§ 373.451(5), Fla. Stat. (2002). Now, 16 years later, Florida is still aiming to meet water pollution limits in the Everglades. However, the deadline for compliance has been postponed until the year 2036 – 64 years after passage of the Clean Water Act.

In its permit application for the state permit, the District explained that it operates the C-11 canal and the S-9 pumping station for the following purposes:

> The Project canals and control structures in the C-11 basin have four functions: (1) to provide

> flood protection and drainage for the basin, (2) to supply water to the basin during periods of low natural flow, (3) to intercept and control seepage from Water Conservation Area (WCA) 3A, and (4) to maintain a groundwater table elevation west of S-13 adequate to prevent saltwater intrusion into local groundwater.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FINAL PERMIT (EXHIBIT A) at II-33, *available at* ftp://everglades.dep.state.fl.us/permitting/Non-ECP/Non-ECP%20Permit%20Exhibit%20A.pdf (last visited Nov. 7, 2003). The District did not include allocation of water to the Everglades west of the pump station as one of the S-9 pumping station's functions.

ARGUMENT

I

THE DISTRICT'S OPERATION OF THE S-9 PUMPING STATION REQUIRES AN NPDES PERMIT BECAUSE IT ADDS GROUND WATER POLLUTANTS TO THE WATERS IT DISCHARGES INTO THE EVERGLADES

The heart of the District's argument is that it should not be held responsible for the pollution it discharges into the Everglades through the S-9 pumps because the pumps are not responsible for physically introducing pollution into the waters of the South New River Canal. Pet'r Br. at 20, 26-27. That claim is inconsistent with the District's explanation of the S-9 pumping station in its brief and contradicts the only government studies of that issue.

As stated in the District's brief, a major component of the S-9 discharge is ground water seepage. Pet'r Br. at 11. When the S-9 pumps are operating, their rapid withdrawal of immense quantities of water from the South New River Canal dramatically lowers the water level of the canal and causes ground water to flow into the canal.[17] As described in a United States Geological Survey report that investigated the effects of the operation of the S-9 pumps:

> Surface water inflow from lateral canals and ground-water inflow are the chief means of raising canal water-levels after pumping ceases. On several occasions, groundwater was seen seeping from the banks of South New River Canal during and after pumping.

FREIBERGER REPORT at 14 (App. 7, 14-15a).

Ground water has different chemical characteristics and contaminants than surface water because it stays in the ground and has long contact with polluting materials

[17] The District also forces ground water into the South New River Canal by holding the water levels in the Everglades west of the levee at a much higher elevation than the water levels in the South New River Canal. (App. 4, 11a). This difference in water elevation forces ground water to flow beneath the levee and come up into the C-11 basin where it is collected in District canals and then discharged by the S-9 pumps. Pet'r Br. at 11. The ground elevation in the C-11 basin is lower than the Everglades west of the levee because drainage operations have caused the disappearance of at least four feet of muck soil that formerly covered the lands in this region. EVERGLADES INTERIM REPORT at 2-10, *available at* http://www.sfwmd.gov/org/ema/everglades/interimrpt_98/chpt2.pdf. The lowering of ground levels in the C-11 basin has resulted in the flooding problems described in the amicus brief of the City of Weston.

in the soils and rock. 55 Fed. Reg. 47,990, 47,995-96 (Nov. 16, 1990). Typical ground water pollutants include total dissolved solids (salts and minerals that are dissolved in the water) that degrade surface waters into which they are discharged. FREIBERGER REPORT at 20 (App. 7, 15a); *see also Northern Plains Resource Council v. Fidelity Exploration and Development Co.*, 325 F.3d 1155, 1158 (9th Cir. 2003), *cert. denied*, 2003 U.S. LEXIS 7730 (Oct. 20, 2003).

It does not matter whether the ground water pollutants are naturally occurring or are introduced by human activities. In *Fidelity*, the Environmental Protection Agency rejected a state agency's attempt to exempt naturally occurring ground water pollutants from point source regulations. 325 F.3d at 1162-63. The EPA's position was upheld by the Ninth Circuit which ruled that a mine operator was required to obtain an NPDES point source permit for a discharge of ground water to surface water even though the pollutants had not been introduced into the ground water by the discharger. *Id.* Because the operation of the S-9 pumping station causes ground water to flow into the South New River Canal, and then discharges this ground water seepage into the Everglades, the discharge of this ground water through the S-9 pumps requires an NPDES permit.

II

THE SOLICITOR GENERAL'S "UNITARY WATERS" THEORY CONTRADICTS THE EXPRESS TERMS OF SECTION 402 WHICH REQUIRES PERMITS FOR ANY DISCHARGE WHICH ADDS POLLUTANTS

A. The New Exemption From Section 402 Of The Clean Water Act Sought By The District And The Solicitor General Cannot Be Reconciled With The Express Terms Of The Act

The discharge from the S-9 pumps is a mixture of storm water and ground water. As set out in Argument I, the ground water at issue here contains pollutants and the discharge of polluted ground water into the Everglades requires an NPDES permit. However, if the discharge were entirely storm water it would still be subject to regulation under section 402(p) of the Clean Water Act, which requires NPDES storm water permits for discharges which either: a) contribute to a violation of a water quality standard in the receiving water; or b) are a significant contributor of pollutants. 33 U.S.C. § 1342(p), CWA § 402(p) (App. 10, 20a-21a). The "unitary waters" theory of the District and the Solicitor General would create an exemption from this statutory requirement. Such a sweeping exemption has no basis in the language or purposes of the Clean Water Act.

Subsection 1342(p)(1) generally exempts storm water from regulation prior to 1994 but requires NPDES permits for five specified categories of discharges composed entirely of storm water. Those five categories are set out in the next subsection, subsection 1342(p)(2): (A) previously permitted discharges, (B) discharges from industrial activity, (C) large municipal storm water systems, (D)

medium municipal storm water systems (urban run-off) and (E) discharges where the Administrator or the delegated state administrator determines that the discharge "*contributes to a violation of a water quality standard*" in the receiving water *or* is a "*significant contributor of pollutants*" to the receiving water. 33 U.S.C. § 1342(p)(2), CWA § 402(p)(2) (App. 10, 20a) (emphasis added).

After 1994, additional storm water discharges that require NPDES permits were to be designated by EPA rules:

> [T]he Administrator . . . shall issue regulations . . . which designate stormwater discharges, *other than those discharges described in paragraph (2)* to be regulated to protect water quality. . . .

33 U.S.C. § 1342(p)(6), CWA § 402(p)(6) (App. 10, 21a) (emphasis added). The regulations to be promulgated under this latter section cannot address the five categories of storm water discharges for which NPDES permits are already required by statute.

The requirement of a storm water permit for discharges that contribute to water quality violations is not merely of academic interest. The water discharged through S-9 into the Everglades is categorized by the EPA and the State of Florida as impaired by pollution. Clean Water Act section 303(d) requires states to file with the EPA reports that identify water bodies within the state that are so polluted that they fail to meet established water quality standards. 33 U.S.C. § 1313(d), CWA § 303(d). The EPA then approves (or modifies) the list of "impaired" waters. 33 U.S.C. § 1313(d)(2), CWA § 303(d)(2). The South New River Canal from which S-9 pumps water into the Everglades is listed on the official

approved 303(d) list as being impaired – polluted beyond legal limits – as to nutrients,[18] dissolved oxygen and coliforms. EPA DECISION DOCUMENT at 140 (App. 8, 18a).[19] The portion of the Everglades that receives this polluted water is similarly listed as being impaired as to nutrients and dissolved oxygen.[20]

Given that both the South New River Canal and the Water Conservation Areas are in violation as to the same pollution parameters, it appears that Florida and the EPA have determined that the S-9 pump discharge "contributes to a violation of a water quality standard." Therefore a Clean Water Act section 402(p)(2)(e) NPDES permit would be required if the discharge were composed entirely of storm water.

B. There Is No Exemption In The Clean Water Act Based On The Construction History Of The Drainage Source

The District and Solicitor General attempt to parlay the construction history of the discharge source into a new exemption from the Clean Water Act. It is an established

---

[18] Nutrients are primarily phosphorus and nitrogen which are contaminants found in urban run-off and (as to phosphorus) also in ground water.

[19] A map which graphically depicts these areas is attached as Appendix 9.

[20] The EPA DECISION DOCUMENT and related map also show that the waters in the Everglades that receive discharges from S-9 (Wbid Numbers 3268, 3268A and 3278A) are similarly impaired as to nutrients, dissolved oxygen and mercury. (App. 8, 18a; App. 9, 19a).

fact that the canal from which pollutants are pumped into the Everglades was carved out of the Everglades area as a separate water body some 50 years ago through human construction activity. *Miccosukee Tribe of Indians v. South Florida Water Management District*, 280 F.2d 1364, 1366 (11th Cir. 2002). However, impoundments of waters by levees or dams are specifically included in the definition of "Waters of the United States." 40 C.F.R. § 122.2(d) (including "[a]ll impoundments of waters otherwise defined as waters of the United States under this definition"); *see Kaiser Aetna v. United States*, 444 U.S. 164, 172 (1979) (man-made pond connected to the Pacific Ocean constituted navigable waters for Clean Water Act regulatory purposes).

As these waters exist today, the pollutants contained in water collected in the drainage canal would not flow into the Everglades except for the operation of the S-9 pumping station. *Miccosukee*, 280 F.3d at 1368-1369 and n.8. Waters from the South New River Canal now "intermingle" with the waters of the Everglades only to the extent that the canal waters are forced upward several feet by industrial-scale pumps.

The Solicitor General and the District argue that the entirety of the waters of South Florida, including the waters of Lake Okeechobee (a drinking water source), the Everglades (including the impaired waters of the Water Conservation Areas and the nearly pristine waters of Everglades National Park), the agricultural canals that receive pollution from 700,000 acres of sugar cane fields, and canals in urban drainage basins that receive urban storm water pollution containing urban fertilizers, detergents, household chemicals, gas, and oil are one water body because a century ago these waters had a "hydrologic

association." Pet'r Br. at 22, 47-49; Br. of the United States at 15-20. This merging of water bodies for the purpose of avoiding water pollution regulation is the very antithesis of the Clean Water Act approach which is to designate the uses and establish water quality standards for each individual water body for the specific purpose of protecting the distinct, unique character of each of these natural resources. 33 U.S.C. §§ 1313(c)(1), (2), CWA § 303(c)(1), (2). Under this argument, the District, with impunity from NPDES permitting, would be able to pump waters from drainage canals that fail to meet the standard for human recreation and fish and wildlife propagation and survival, into Lake Okeechobee, a designated drinking water resource.

East of pump station S-9 is a weed choked and debris-strewn canal draining urban subdivision developments and commercial areas; west of S-9 is the priceless Everglades marsh. Under these circumstances, it cannot be fairly argued that the South New River Canal and the Everglades are the same body of water such that pollutants that are in the canal are already located within the Everglades.

III

THE DISTRICT IS NOT ENTITLED TO AVOID THE SECTION 402 PERMITTING REQUIREMENT BY CLAIMING THAT DISPOSAL OF GROUND WATER SEEPAGE AND STORM WATER CONSTITUTES AN ALLOCATION WITHIN THE MEANING OF SECTION 101(g)

The District and the Solicitor General argue that CWA section 101(g), 33 U.S.C. § 1251(g), supports the exemption

of the S-9 pump station from the NPDES permit requirement because regulation of water pollution cannot interfere with allocation of water by the state. Br. of the United States at 25 n.11; Pet'r Br. at 2-3. The District claims that the S-9 pumping station is "allocating" water because it is "used to provide the WCA with water for beneficial uses or for release to Everglades National Park." Pet'r Br. at 11. However, in its application for the state Everglades Forever Act permit for the S-9 pumping station, the District explained the purpose and function of the drainage canal and pumping station:

> The Project canals and control structures in the C-11 basin have four functions: (1) to provide flood protection and drainage for the basin, (2) to supply water to the basin during periods of low natural flow, (3) to intercept and control seepage from the Water Conservation Area (WCA) 3A, and (4) to maintain a groundwater table elevation west of S-13 adequate to prevent saltwater intrusion into local groundwater.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, FINAL PERMIT (EXHIBIT A) at II-33, *available at* ftp://everglades.dep.state.fl.us/permitting/Non-ECP/Non-ECP%20Permit%20Exhibit%20A.pdf (last visited Nov. 7, 2003). The District's permit application correctly stated the facts. The District is not "allocating"; it is "disposing." It is not the need for water in the Everglades that triggers the decision to pump water at the S-9 pump station – it is high water levels in the South New River Canal. The pumps are started when the canal level reaches four feet NGVD and are turned back off when the water has been lowered to one foot NGVD. Pet'r Br. at 11. As the City of Weston has vividly explained: 1) the pumps are disposing of floodwaters; 2) without the pumps the entire South New

River Canal basin (the C-11 West basin) would be flooded; and 3) the pumps are turned on to pull the canal down whenever storms are approaching. Br. of Amicus City of Weston at 4-6. The District is collecting, conveying, and disposing of unwanted ground water and storm water, not allocating water to the Everglades.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Eleventh Circuit should be affirmed.

Respectfully submitted,

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INDEX FOR APPENDICES

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Pumping Stations

S-9

Pumping Station No. 9 was accepted by the South Florida Water Management District on 9 August 1957. It is designed to remove ½-inch of water in 24 hours from a 71-square-mile drainage area served by the South New River Canal. The pumping capacity of this station is 1,861,392,900 gallons in 24 hours.

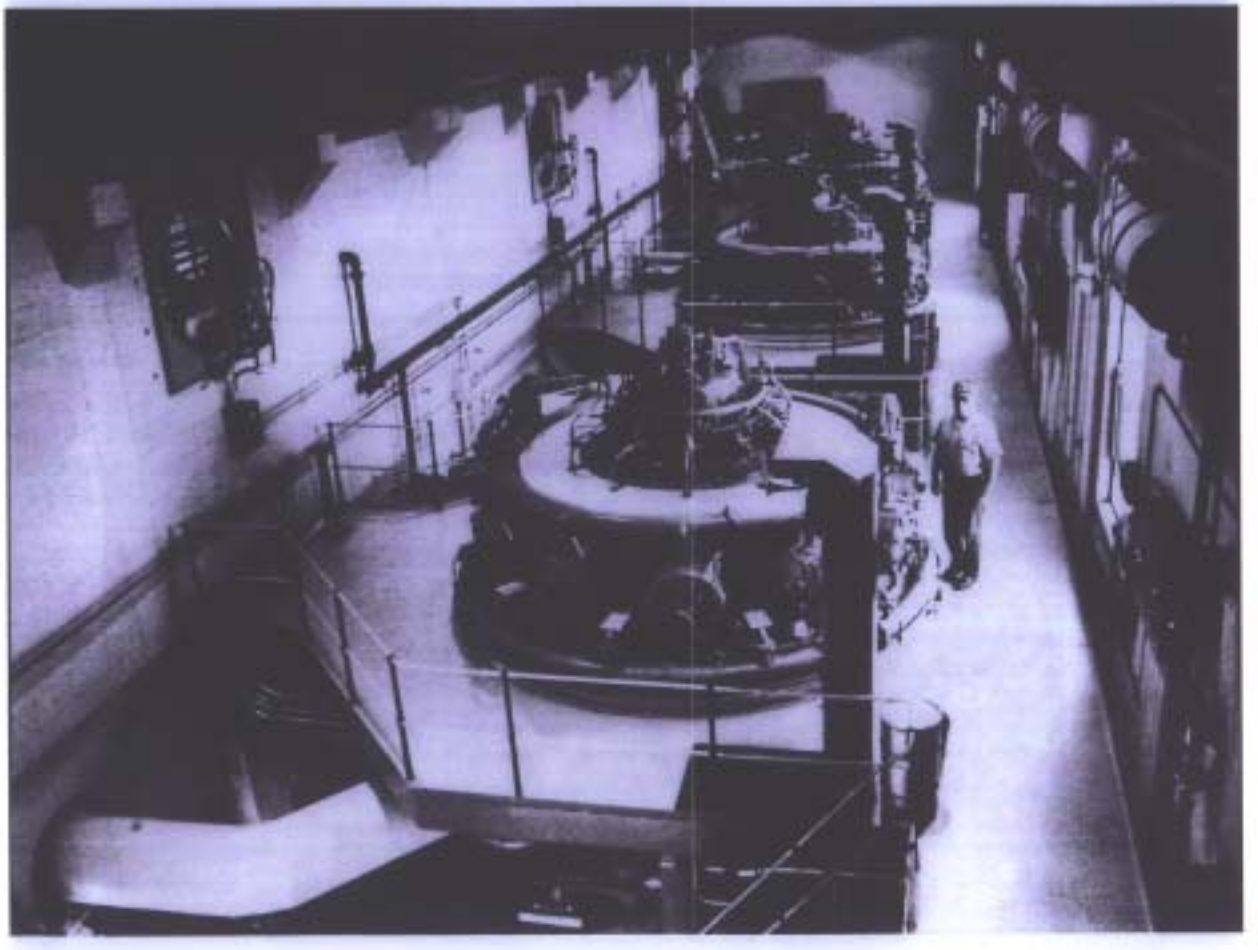
S-9 is located at the west end of the South New River Canal, at the eastern edge of Water Conservation Area 3-A, and ½-mile west of U.S. Highway 27.

Water Conservation Area 3-A receives the water discharged by this station, storing it for future use during the dry season.

Statistics

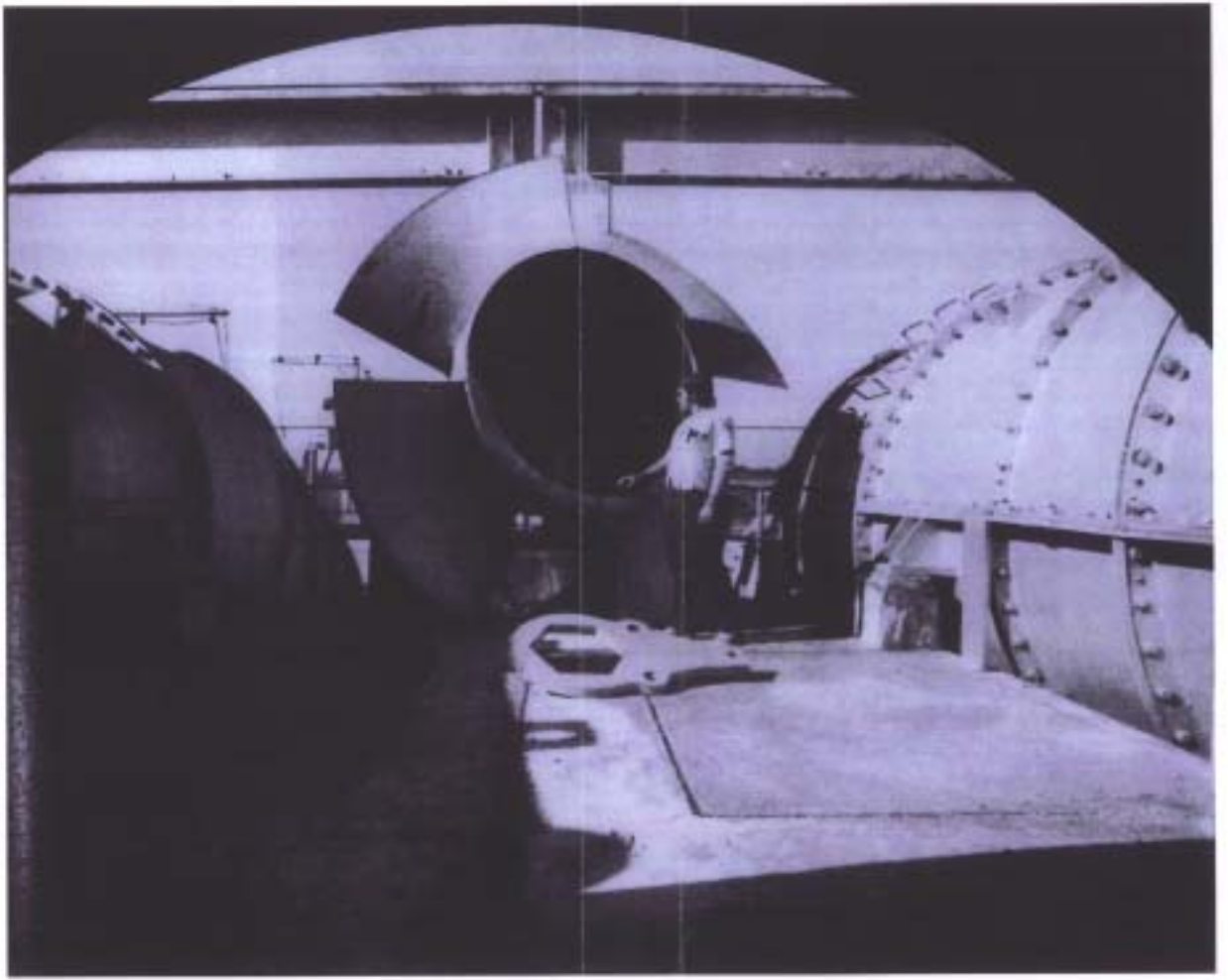
ENGINES	
Number	3
Type	Diesel, 11 cylinder radial Nordberg
Horsepower, each engine	1655
Operating rpm (max.)	400
Fuel consumption, each engine	66 gph
PUMPS	
Number	3
Type	Vertical propeller, axial-flow, 135 inches
Diameter of propeller	122 inches
Design speed of propeller	128 rpm
Pumping capacity of each pump under design conditions	960 cfs (430,878 gpm)
Design head differential	10.4 feet
CONTRACT COSTS	$1,401,960

Of the District's 16 pumping stations, only S-9's diesel engines feature this unique radial design.



Remote locations make self-sufficiency important to station operations. Storage tanks at each station hold diesel fuel in reserve; S-5A stores up to 100,000 gallons, S-13 can hold 3,000 gallons.

Huge propellers in the intake pipes create the vacuum which pulls water in from the canal. The propeller shown at left has been removed with the aid of a supersized wrench, resting in the foreground.



APPENDIX 2

INTERIM WATER CONTROL PLAN

FOR

PUMPING STATION 9A

AND

STRUCTURE 381

JACKSONVILLE DISTRICT
U.S. ARMY CORPS OF ENGINEERS
May 2002

* * *

7-01. General Objectives.

* * *

With the addition of the S-9A pumps, the existing S-9 pump station will only be used as needed for pumping larger runoff events or canal drawdown prior to anticipated events. This will prevent over pumping into WCA 3, prevent over drainage of C-11, and reduce movement of bottom sediments. The operation of S-9A is expected to be near continuous to match the seepage losses from the WCAs which will also aid in consistent canal stages.

7-02. Features.

The S-9A pump station is a seepage control pump station that will replace the existing S-9 pump station's role of pumping seepage losses from WCA-3 which are collected in from the L-37, L-33, and U.S. Highway 27. This pump station will provide a total pumping capacity of 500 cfs, will be located on the L-37 Levee just north of the existing S-9 pump station, and will discharge into C-304 in

eastern WCA-3A. Pumping seepage will be the primary role for the S-9A structure however, S-9 can perform this function if needed for larger forecasted storm events.

* * *

The existing S-9 pump station is a flood control pump station for the Western C-11 basin. This pump station provides a total pumping capacity of 2,880 cfs. S-9 is a 3-bay pump station with three 960 cfs diesel engine driven pumps. The pump station is located at the western end of the C-11 Canal between the L-37 and L-33 Levees.

* * *

7-04. Overall Plan for Water Control.

* * *

The flood control phase of operation is characteristic of periods of pumping runoff events that have occurred in the C-11 basin in order to remove excess runoff or regain canal storage.

* * *

7-09. Flood Control Operations.

The three large S-9 pumps will continue to operate according to their existing flood control regulation with pumping beginning at 4.0 ft., NGD or sooner as measured at S-13A headwater. The C-11 canal will operate as stated in Chapter 7 of the "Master Water Control Manual East Coast Canals" and the "Master Water Control Manual Water Conservation Areas, Everglades National park, and ENP-South Dade Conveyance System". The S-9 and S-9A pumping station will be operated whenever the water level in the C-11 at S-13A exceeds elevation 4.0 ft., NGVD;

however, the water surface should not be drawn down below elevation 0.0 ft., NGVD at the pumping station S-9. Under design head the S-9 pumping station capacity is 2,880 cfs and the S-9A capacity is 500 cfs with a total operating flow not to exceed 2,880 cfs per the non-ECP operating permit. The non-ECP permit does not permit the total flow from S-9 and S-9A to exceed 2,880 cfs.

* * *

APPENDIX 3

Everglades
INTERIM REPORT

JANUARY 1, 1999

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

* * *

Chapter 2: Hydrologic Needs: The Effects of Altered Hydrology on the Everglades

* * *

Post-C&SF Project

* * *

The first major earthworks of the C&SF Project was to construct a 100-mile-long series of levees and borrow canals from Palm Beach of Dade counties. These levees were completed during 1952 to 1954 and became the eastern boundaries of what would become the WCAs, effectively stopping Everglades sheetflow from advancing on urban coastal areas. The next step during the period 1954 to 1959 entailed construction of levees 5, 6 and 7, which formed the northern and western boarders of the WCAs. Construction of additional levees (1 through 4 and 28) completed the partitioning off of 700,000 acres (283,290 ha) of deep muck lands that became known as the Everglades Agricultural Area (EAA). Flood protection for the EAA was provided by construction of large-capacity pump stations. Other flood protection activities during the 1954 to 1959 period included the deepening of the Hillsboro, North New River and Miami canals in the EAA and construction of water control structures (S-11A, S-11B and S-11C) that moved water from WCA-2 to WCA-3, thereby diverting it away from coastal areas. Pump stations (S-9

and private pump stations) were also constructed to move water west from urban areas into the WCAs.

* * *

APPENDIX 4

April 13, 2001

Ecological Impacts of Drought in the Water Conservation Areas

* * *

South Florida Water Management District

* * *

General Information

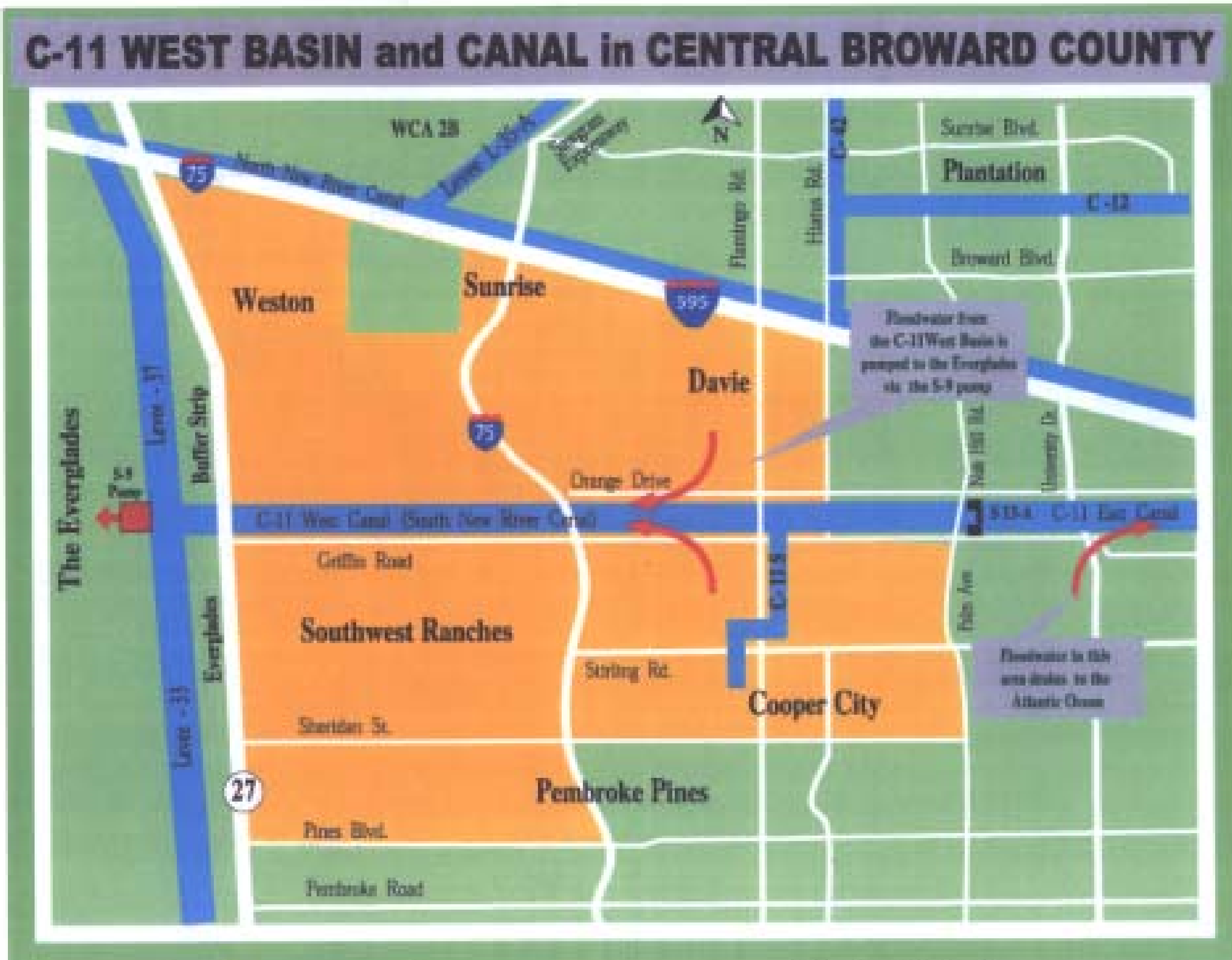
* * *

Water Conservation Areas 3A and 3B

Management of water levels within WCA-3A and WCA-3B is the responsibility of the District in accordance with regulation schedules set by the USACE. * * * Water levels in WCA-3A are regulated from 9.5 to 10.5 ft NGVD.

* * *

APPENDIX 5



C - 11 West Basin

Map Not to Scale

APPENDIX 6

Turf & Landscape

Best Management Practices

for the C-11 West Canal Basin
Broward County, Florida

Executive Summary

When it rains in the C-11 West Basin, urban fertilizers, detergents, household chemicals, gas, oil and other pollutants "wash off" roads, parking lots and driveways and are carried by "stormwater" into drainage canals. If excess fertilizer has been applied, there is also the potential for nutrient laden stormwater to "run off" of lawns and landscaping as well. Ditches, culverts and smaller canals within the basin eventually drain into the C-11 West Canal – and once in the C-11 West Canal – stormwater from the basin is pumped into the Everglades through the S-9 Pump Station just west of US 27 near Holiday Park.

Unlike Broward's other 14 drainage basins that also collect polluted stormwater in canals, the stormwater drains into the C-11 West Canal is discharged directly into the Everglades, in Water Conservation Area 3A. There is currently no type of structure to hold and process – or filter out – the pollution and sediments in canal water before it is discharged into the Everglades.

Because so much untreated stormwater is discharged into the Everglades by way of the C-11 West Canal, the C-11 West Basin has been cited as one of the top urban polluters of the Everglades.

* * *

APPENDIX 7

EFFECTS OF BACKPUMPING FROM SOUTH NEW RIVER CANAL AT PUMP STATION S-9

ON QUALITY OF WATER IN WATER-CONSERVATION AREA 3, BROWARD COUNTY, FLORIDA

By

Herbert J. Freiberger

OPEN-FILE REPORT
73026

Prepared by
U.S. GEOLOGICAL SURVEY
in cooperation with
CENTRAL AND SOUTHERN FLORIDA
FLOOD CONTROL DISTRICT

* * *

1973

* * *

[12] WATER MANAGEMENT

Water Levels

* * *

The ground-water levels in the drainage area range from about 6 feet above ms1 north of the canal to about 3 feet above msl south of the canal near Snake Creek Canal. The ground water level is about 4 feet above msl adjacent to South New River Canal.

* * *

[14] Surface-water inflow from lateral canals and ground-water inflow are the chief means of raising canal

water-levels after pumping ceases. On several occasions, ground water was seen seeping from the banks of South New Rivert Canal during and after pumping.

* * *

[20] WATER QUALITY

Background Data

* * *

[22] South New River Canal between S-9 and S-13A is occasionally contaminated by bacteria. Average total and fecal coliform counts are 5,550 and 330 colonies per 100 ml (milliliters) of water. Maximum total and fecal coliform counts were 20,400 and 1,300 colonies per 100 ml of water. The high concentrations of coliform bacteria that occasionally occur are presumably from cattle wastes.

* * *

[30] Dissolved Oxygen

* * *

Concentrations of dissolved oxygen at site 8, in South New River Canal east of S-9 were relatively lower (0.2 to 2.4 mg/l) during all four sampling periods when compared with concentrations in Conservation Area 3A (as high as 12.9 mg/l). Dissolved oxygen at site 8 was lower than father east in the canal because of the great amount of ground-water discharge to the canal east of S-9 after pumping.

* * *

[35] Decreases in dissolved oxygen west of S-9 (site 9) in Water Conservation Act 3A by backpuming were more

drastic in the dry season than in the wet season (fig. 13). During the west season, when much of the water in South New River Canal east of 8-9 is derived from surface water, the dissolved oxygen is higher than during the dry season.

* * *

[45] Nitrogen

* * *

[56] The effects of backpumping on changes in nitrogen species were most pronounced at S-9, but changes were also observed in canals and marshes bordering the canals in Water-Conservation Area 3. Changes in nitrogen content in the canals of Water Conservation Act 3 were similar to changes in dissolved oxygen with respect to location. In effect, the greater the distance from the pump station, the less the degradation of the water due to increased nitrogren. The data in figures 22 and 23 show that degradation by ammonia in the two canals is most pronounced within a mile of the pump station.

* * *

[60] SUMMARY AND CONCLUSIONS

* * *

Backpumping of water at S-9 generally lowers the water level in South New River Canal near the pump station about 4 feet while at S-13A, the eastern end of the backpumping reach, the water level is lowered only about 2 feet. Much of the recharge to the canal near S-9 after pumping is from ground-water inflow which greatly inluences the quality of water in South New River Canal.

* * *

[61] Dissolved oxygen concentrates in South New Rivert Canal just east of S-9 were consistently low, presumably from the great amount of ground-water inflow to the canal. Dissolved oxygen west of S-9 was considerably higher that of S-.9. During backpumping, dissolved oxygen concentrations west of S-9 immediately decreased to about the same concentrations as east of S-9. Sags in dissolved oxygen were recorded in the canal system of Water Converation Area 3 as far as e miles away from S-9. Dissolved oxygen in marsh sites remote from the conservation areas canals did not decrease.

[62] Ammonia was the dominant form of nitrogen in the South New River Canal east of S-9 because of the lack of dissolved oxygen needed to convert it to nitrate. Ammonia in the canals of Water-Conservation Area 3 west of S-9 immediately increased when pumping began. Remote marsh sites were not affected. The areal extent of degradation was dependent on the amount of backpuming and on the amount of flow in the canals from releases from Water-Conservation 2.

APPENDIX 8

DECISION DOCUMENT
REGARDING
DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S §303(d)
LIST AMENDMENT SUBMITTED ON
OCTOBER 1, 2002 AND SUBSEQUENTLY
AMENDED ON MAY 12, 2003

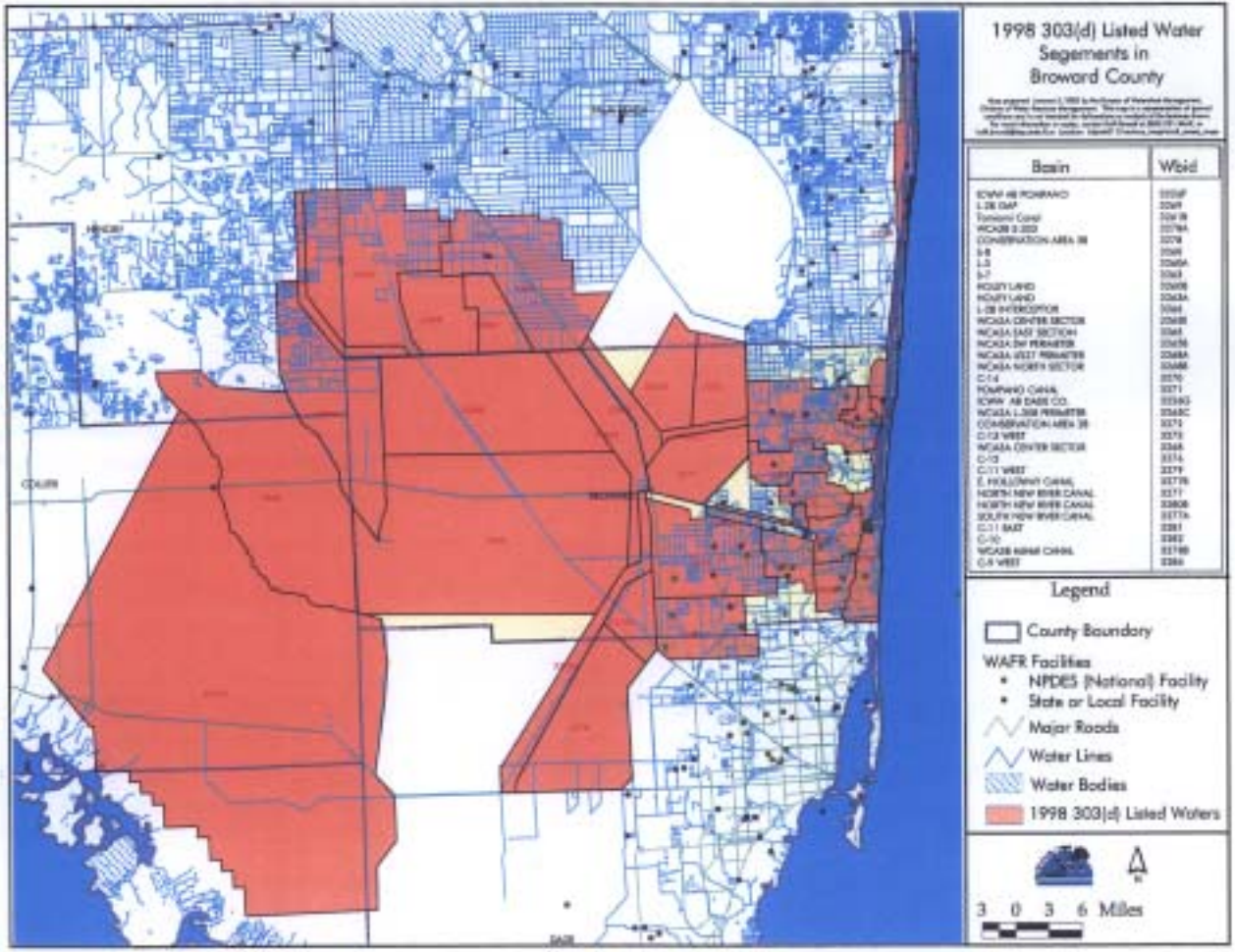
Prepared by the
Environmental Protection Agency, Region 4
Water Management Division

[Page 140]

June 11, 2003

HUC Name	Water Segment	WBID	Parameters of Concern	Comments	Priority	Basin Rotation Group	Projected Year of TMDL Development
			* * *				
SOUTHEAST FLORIDA COAST	WCA3B S-333	3278A	Dissolved Oxygen, Nutrients		Low	Group 5	2011
			* * *				
SOUTHEAST FLORIDA COAST	WCA3A CENTER SECTOR	3268	Dissolved Oxygen, Nutrients, Mercury (Based on Fish Consumption Advisory)		Low	Group 5	2011
SOUTHEAST FLORIDA COAST	WCA3A US27 Perimeter	3268A	Dissolved Oxygen, Nutrients		Low	Group 5	2011
			* * *				
SOUTHEAST FLORIDA COAST	SOUTH NEW RIVER CANAL	3279	Dissolved Oxygen, Nutrients, Coliforms		Low	Group 4	2010
			* * *				

APPENDIX 9


1998 303(d) Listed Water Segements in Broward County
Basin
Wbid
Legend
County Boundary
WAFR Facilities
NPDES (National) Facility
State or Local Facility
Major Roads
Water Lines
Water Bodies
1998 303(d) Listed Waters
3 0 3 6 Miles

APPENDIX 10

33 USCS § 1342 (2003)

§ 1342. National pollutant discharge elimination system

* * *

(p) Municipal and industrial stormwater discharges.

(1) General rule. Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under section 402 of this Act [this section]) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) Exceptions. Paragraph (1) shall not apply with respect to the following stormwater discharges:

(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection [enacted Feb. 4, 1987].

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

* * *

(6) Regulations. Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

* * *